



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

(petitioner)

DECISION

MDV-18/54689

PRELIMINARY RECITALS

Pursuant to a petition filed September 4, 2002, under Wis. Stat. §49.45(5) and Wis. Adm. Code §HA 3.03(1), to review a decision by the Eau Claire County Dept. of Human Services in regard to medical assistance, a hearing was held on October 8, 2002, at Eau Claire, Wisconsin.

The issue for determination is whether the petitioner is ineligible for medical assistance as the result of a divestment.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services
Division of Health Care Financing
1 West Wilson Street, Room 250
P.O. Box 309
Madison, WI 53707-0309

By: Karon Davidson, ESS
Eau Claire County Dept Of Human Serv
721 Oxford Avenue
PO Box 840
Eau Claire, WI 54702-0840

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien

Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is a resident of Eau Claire County.
2. The petitioner applied for institutional medical assistance on February 18, 2002 and was found eligible as of February 13, 2002.

3. From January 2001 through January 2002 the petitioner gave away \$67,576.85 from accounts at Firststar Bank. He received nothing in return for this money. Neither he nor his relatives reported these gifts to the county agency when applying for medical assistance.
4. On March 26, 2001 the petitioner sold his house and property to his son for \$60,000. The proceeds of the sale were then divided among his children. The petitioner retained a life estate on the property.
5. At the time of the sale of the property its value was \$111,500.
6. The petitioner was born on November 2, 1911 and was 90 years old at the time of the sale.
7. The remainder value of the portion of his property that the petitioner gave away was \$80,033.50.

DISCUSSION

A person whose assets exceed \$2,000 is ineligible for medical assistance. §49.47(4)(b)3g, Wis. Stats. Medical assistance law prevents recipients from reaching this limit by divesting assets. A divestment occurs when an applicant, or person acting on the applicant's behalf, transfers assets for less than their fair market value during the lookback period. The lookback period is generally 36 months, although longer periods exist for trusts. §49.453(1)(f), Wis. Stats. An asset "includes all income and resources of the individual and of the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive because of action" by the individual, his spouse or someone acting on his or his spouse's behalf. 42 USC 1396p(e)(1). Divesting assets renders recipients ineligible for medical assistance for the number of months obtained by dividing the amount of disposed assets over the \$2,000 limit by the statewide average monthly cost to a private pay patient in a nursing home. §HFS 103.065(5)(b), Wis. Adm. Code; §49.453(3), Wis. Stats.; see also, *MA Handbook*, App. 14.5.2.

The petitioner's representative does not contest that the petitioner gave away \$67,576.85 from Firststar bank accounts between January 2001 and January 2002. Nor does he contest that the petitioner sold his property for \$60,000 and then gave away all of the proceeds. He does contest the county's assertion that the petitioner divested a total of \$96,966.18 when he transferred the house. Further, he contends that the petitioner needs medical assistance regardless of how much he gave away because he no longer has money to provide for himself.

The representative's first disagreement with the calculation of the divestment on the property is that he believes that the \$111,500 value that the county assigns to the property is too high. He showed pictures that illustrate that the house needs repairs and contends that similar property in the area sold for less. However, he did not submit an appraisal of the house that contradicts the tax statement used by the county. Nor is there any evidence that he challenged the tax assessment when paying his taxes. I find that the tax assessment is the best evidence available to determine the value of the property, so the county correctly determined that it was worth \$111,500.

The representative also states that because the petitioner was paid \$60,000 for the property that this portion should not be considered a divestment. However, the petitioner immediately gave this \$60,000 away without receiving anything else in return, so it cannot reduce any potential divestment.

I do question the value of the life estate as determined by the county. They subtracted the \$60,000 paid from the \$111,500 value of the house and then applied the .71779 remainder value for a person 90 years old to the \$51,500 left over. This equaled \$36,966.18. They then added the \$60,000 sale price of the property. This is incorrect. First, the true value of the remainder interest does not change because the petitioner places an arbitrary value on the house or receives a temporary payment for it. The remainder interest is the amount left over after the value of the life estate is deducted from the total value of the house. Both of these are based upon the recipient's age at the time that the life estate is set up and the true value of the property. The county agency correctly found that the remainder value for a person 90 years old is .71779, but that fraction should have been multiplied by the actual value of the house, or \$111,500, which would equal \$80,033.50.

But the \$80,033.50 is the total amount divested when the petitioner gave up the title to his house. There are two ways to reach this figure. If one assumes, as the county agency apparently does, that the petitioner actually received

the \$60,000 and then gave that amount away, then the \$60,000 must be subtracted from the amount divested when the remainder interest was transferred. If this is done, then the petitioner divested \$20,033.50 rather than \$80,033.50 at that time. However, he would still be considered to have divested the other \$60,000 when that money was given to his children, which leads to an \$80,033.50 divestment. One could also assume that because the \$60,000 was immediately given to his children that he received nothing for the interest he gave up on his property. In that case he divested \$80,033.50 as soon as he gave the interest away. Thus, whether this is considered one or two divestments, the result is that his action related to the creation of the life estate led to an \$80,033.50 divestment.

The total divestment is \$147,610.35, which equals the \$67,576.85 from the Firststar accounts and the \$80,033.50 from transferring of the remainder interest in the petitioner's property. I note that the county worker stated that it appears that the petitioner divested additional funds that are not alleged here. Nothing in this decision prevents the county agency from taking action to lengthen the petitioner's period of ineligibility if it demonstrates that further divestments occurred.

The only question remaining is whether the penalty would create an undue hardship. According to §HFS 103.065(4)(d)(2)(d), undue hardship occurs when a "serious impairment to the institutionalized individual's immediate health status exists." The petitioner's representative argues that his father's health would be impaired because he needs to live in a nursing home and he has no assets available for his care. If I accept his argument, all divestment actions would fail on undue hardship grounds because the nature of a divestment is that it leaves the person making the divestment with no money. I do not accept this argument.

CONCLUSIONS OF LAW

1. The petitioner divested \$80,033.50 when he kept a life estate in his property and gave the remainder interest to his son.
2. The petitioner divested \$67,576.85 from his Firststar accounts.

NOW, THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it find that the petitioner divested \$147,610.35 rather than the \$164,543.04 it originally determined that he divested. It is further ordered that it reduce the length of the petitioner's period of ineligibility for medical assistance accordingly. Nothing in this decision shall be construed to prevent the county agency from taking further action against the petitioner if it determines that he divested funds not discussed in this decision or if it determines that previously paid benefits should be recovered.

REQUEST FOR A NEW HEARING

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals for benefits concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of Eau
Claire, Wisconsin, this 17th day of
October, 2002

/sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals
122/MDO